

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW PETERSON, et al.,

Plaintiffs,

v.

THOMSON INT'L, INC.,

Defendant.

Case No. 1:22-cv-00701-JLT-CDB

ORDER GRANTING DEFENDANT'S
MOTION FOR EXTENSION OF CASE
MANAGEMENT DATES

(Doc. 47)

Pending before the Court is Defendant's motion for a nine-month extension of all case management dates, supporting memorandum and attorney declaration, filed April 26, 2023. (Docs. 48-50). Plaintiffs filed an opposition with supporting declaration. (Docs. 53-54). The Court convened the parties for a motion hearing on May 11, 2023. The Court has considered the arguments made by the parties in their filings and supplemented during the motion hearing, and for the reasons set forth on the record during that hearing and further below, the Court makes the following rulings.

Introduction

Defendant argues a nine-month extension of discovery, pretrial motion and trial dates is warranted because it has transmitted 33 document requests to various third parties, including the Centers for Disease Control and Prevention, Food and Drug Administration, various public health agencies, and numerous of the Plaintiffs' medical providers, all of which remain outstanding.

1 Defendant proffered during the motion hearing that its experience through litigating similar
2 claims in other courts is that some of the public health agencies have taken up to eight months to
3 respond to similar record requests. Defendant maintains that it timely transmitted the record
4 requests after receiving disclosure authorizations from Plaintiffs – a process that was protracted
5 and required Court intervention to resolve. (*See* Docs. 35-36, 39). Defendant maintains it would
6 suffer significant prejudice without the requested extensions, arguing, for instance, that “it is
7 impossible to take meaningful depositions without complete records” and that Defendant could
8 not adequately prepare for trial without the records. (Doc. 47 at 5).

9 Plaintiffs generally argue that Defendant has not met its burden of demonstrating good
10 cause for such a lengthy extension, that Defendant through lack of diligence is responsible in part
11 for its discovery challenges, and that Plaintiffs are amenable to a more “modest” two-month
12 extension. (Doc. 53 at 4-5).

13 **Legal Standard**

14 Under Federal Rule of Civil Procedure 16, a scheduling order “may be modified only for
15 good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’
16 standard primarily considers the diligence of the party seeking the amendment.” *Johnson v.*
17 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). If the moving party is unable to
18 reasonably meet a deadline despite acting diligently, the scheduling order may be modified. *Id.*
19 If, however, the moving party “‘was not diligent, the inquiry should end’ and the motion to
20 modify should not be granted.” *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.
21 2002) (*quoting Johnson*, 975 F.2d at 609).

22 In addition to focusing on the good cause standard of Rule 16, the district court must also
23 consider the following factors when ruling on a motion to amend the scheduling order: “1)
24 whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party
25 would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the
26 guidelines established by the court, 5) the foreseeability of the need for additional discovery in
27 light of the time allowed for discovery by the district court, and 6) the likelihood that the
28 discovery will lead to relevant evidence.” *Morris v. Sutton*, No 1:17-cv-01488-AWI-SAB, 2019

1 WL 2994291, *4 (E.D. Cal. July 9, 2019) (quoting *City of Pomona v. SQM N. Am. Corp.*, 866
2 F.3d 1060, 1066 (9th Cir. 2017)).

3 **Analysis**

4 First, the Court concludes Defendant has demonstrated sufficient good cause that the
5 Court may grant the requested modification to all case management dates. Defendant has acted
6 diligently: it consulted with Plaintiffs to seek voluntary authorizations for document disclosures,
7 retained a third-party vendor to assist in obtaining the documents, and generally acted in a timely
8 fashion.

9 Plaintiffs' counterarguments that Defendant has not acted with diligence are unpersuasive.
10 While the Court agrees with Plaintiff that Defendant's sparse motion papers standing alone failed
11 to adequately demonstrate diligence sufficient to warrant a nine-month extension (Doc. 53 at 3-4),
12 Defendant sufficiently supplemented the record during the motion hearing to establish good
13 cause, as set forth above. In particular, Defendant represented that it has taken public health
14 agencies in other litigations up to eight months to return the types of records at issue in this case.
15 Plaintiffs have identified any material delay or lack of diligence by Defendant in connection with
16 seeking to obtain these and the other records that have been requested but not yet received from
17 third parties.

18 Plaintiffs' other arguments implicating Defendant's lack of diligence (*id.* at 5-6) are more
19 akin to general complaints regarding Defendant's lack of responsiveness and cooperation in
20 conducting discovery – those complaints do not evidence a lack of diligence on the part of
21 Defendant in connection with seeking the outstanding discovery it maintains warrants the
22 requested extensions.

23 The Court also has considered the *City of Pomona* factors and concludes, on balance, they
24 favor granting the extensions. The only additional prejudice or harm Plaintiffs claim they may
25 suffer if Defendant's motion is granted is a nine-month delay in seeking recovery for injuries that
26 were sustained almost three years ago. Although the Court shares Plaintiffs' preference for a
27 speedier disposition of the case, Plaintiffs do not articulate, for instance, tangible prejudice such
28 as increased costs or substantial alterations to litigation strategy that other courts find weighs

1 against granting motions to modify the case schedule. *E.g., Morris*, 2019 WL 2994291, *5. *See*
2 *Keiper v. Victor Valley Transit Auth.*, 2016 WL 11651894, *4 (C.D. Cal. May 19, 2016) (“The
3 Court agrees that Plaintiffs would suffer some prejudice if the Court [extends] the instant
4 action.... However, the Court is unpersuaded by Plaintiffs argument that they will be prejudiced
5 by the delay in their recovery of damages, as it presumes that the plaintiffs will prevail on their
6 claims.”).

7 The Court also balances the prejudice Defendant would suffer in being required to
8 complete discovery within the next week without the benefit of having a significant number of
9 outstanding medical and other records that are important to exploring and developing Plaintiffs’
10 claims for relief.

11 **Conclusion and Order**

12 Accordingly, it is HEREBY ORDERED that Defendant’s motion (Doc. 47) is
13 GRANTED.

14 It is FURTHER ORDERED that the Scheduling Order (Doc. 19) remains in full force and
15 effect with the following amendments:

16 **Discovery Deadlines:**

17 Non-Expert Discovery Cut-off: February 19, 2024

18 Expert Disclosure Deadline: March 4, 2024

19 Rebuttal Expert Disclosure Deadline: March 18, 2024

20 Expert Discovery Cut-off: April 15, 2024

21 **Non-Dispositive Motion Deadlines:**

22 Filing Deadline: April 29, 2024

23 Hearing Deadline: June 5, 2024, at 8:30 a.m., Bakersfield, CA

24 **Dispositive Motion Deadlines:**

25 Deadline to Meet & Confer: June 10, 2024

26 Filing Deadline: June 24, 2024

27 Hearing Deadline: August 6, 2024, at 8:30 a.m., Fresno, CA

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Pre-Trial Conference:

Joint Pretrial Statement Filing Deadline: September 20, 2024

Pre-Trial Conference Date: October 7, 2024, at 1:30 p.m., Fresno, CA

Jury Trial: December 3, 2024, at 8:30 a.m., Fresno, CA

IT IS SO ORDERED.

Dated: May 12, 2023


UNITED STATES MAGISTRATE JUDGE